



DECISION COVER SHEET

☒ ACTION BY: Public Members Only

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To : BOARD MEMBERS

Date: August 22, 2016

From : ADMINISTRATIVE LAW JUDGE: Diana Woodward Hagle

CASE: HC AUTOMOTIVE, INC., dba HOOMAN CHRYSLER JEEP DODGE RAM v. FIAT CHRYSLER AUTOMOBILES
Protest Nos. PR-2429-15, PR-2430-15, PR-2431-15, and PR-2432-15

TYPE: Vehicle Code section 3065.1 Franchisor Incentive Program

PROCEDURAL SUMMARY:

- FILED ON CALENDAR: September 9, 2015
- MOTIONS FILED: Protestant's Motion to Strike Respondent's Prehearing Brief (denied)
- HEARING: May 16-20, 2016
- COUNSEL FOR PROTESTANT: Law Offices of Gavin M. Hughes, Esquire
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- COUNSEL FOR RESPONDENT: Wheeler Trigg O'Donnell LLP
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EFFECT OF PROPOSED DECISION:

The Proposed Decision overrules consolidated Protests PR-2429-15 [Chrysler], PR-2430-15 [Dodge], PR-2431-15 [Jeep], and PR-2432-15 [RAM]. Respondent, having complied with section 3065.1, may therefore proceed with charging back from protestant's dealer account amounts it previously paid in sales incentive claims (the filing of a protest stays the chargeback until the board issues a final order).

SUMMARY OF PROPOSED DECISION:

Background Findings

- Fiat Chrysler Automobile's (FCA) Volume Growth Program (VGP) is a "dealer incentive"

sales promotion which rewards dealers for reaching certain monthly sales goals. The qualifying number of sales for each dealer is recalculated each month, using a complex formula called Market Performance Level (MPL). FCA pays dealers upon receiving claims, consistent with its policy of later verifying dealer compliance through audits.

- Dealers are required to report all sales---not just those qualifying for incentives---within two days on FCA's DealerCONNECT password-accessed website; reports of sale are called New Vehicle Delivery Reports ("NVDR's"). Incentive claims are made separately on DealerCONNECT. Respondent's Dealer Policy Manual, Incentive Program Rules Manual ("Gold Book"), and monthly updates to the VGP are accessed on DealerCONNECT.
- Hooman Nissani is either sole owner or majority shareholder of HC Automotive, Inc. dba Hooman Chrysler Jeep Dodge RAM (Hooman's) and was protestant's only witness. When he bought a distressed FCA dealership in Inglewood in the Fall of 2013 and became an FCA franchisee, he already owned four or five vehicle franchises. He had, at his other dealerships, "VIP Programs" which offered service customers free loaner vehicles; FCA did not, at that time, have an established loaner program for dealers.
- The audit (12/1/2014 to 1/14/2015) covered Hooman's sales incentive records for the nine-month period from March 1, 2014 to November 30, 2014. At Hooman's request, an audit manager review was held February 12, 2015 to March 2, 2015.
- During the audit period, some of the sales which Hooman's had reported to FCA ("NVDR'd" on DealerCONNECT)¹----close to 100 vehicles---were made to itself and had qualified the dealership for \$385,115 in VGP payments. Hooman's had used most of those vehicles as loaners for service customers in its "VIP Program". However, Hooman's had not reported any of the sales to DMV so that Certificates of Title and registration cards could be issued, nor had the dealership prepared contracts or deal jackets; in lieu of contracts, it had produced computer "screen shots" of certain information about each vehicle. It is unknown what form of "temporary registration [was] on the windshields..." of the loaner vehicles (Mr. Nissani's testimony), since none were either "titled" or registered (until later, during the audit).
- On December 5, 2014, Mr. Nissani was advised by the auditor that \$385,115 would be charged back from Hooman's account because of its failure to "title" and register the vehicles at or near the time of each sale. Mr. Nissani protested that he did not know of the requirements to do so to qualify the sales for incentive payments. He testified that he thought that "titling" of loaner vehicles was unnecessary because of his experience as a franchisee of other manufacturers; this testimony was neither corroborated nor refuted. In regard to the lack of documentation for the sales to itself, Mr. Nissani stated that it would be a "waste [of] paper" to draft contracts with oneself.
- From mid-December 2014 through the end of the audit on January 14, 2015, Hooman's "titled" and registered the loaner vehicles and produced "DMVdesk" reports for each vehicle. Both the auditor and the audit manager checked some or all of the registrations

¹ The dealership received its DealerCONNECT password in January 2014.

through an unnamed "3rd party system" and AutoCheck and were satisfied with the information, although no Certificates of Title or registration cards were produced during the audit, the audit appeal or at the hearing.

- Mr. Nissani appeared before the Audit Appeal Committee at FCA Headquarters in Michigan on July 9, 2015. Concerned about preventing its vehicles from being "brokered" (accomplished by a dealer selling vehicles without "titling" or registering them), the committee asked him for documents showing actual use of the vehicles as loaners. Mr. Nissani did submit some rental/loaner agreements on the VIN's the committee had requested, as well as some usage logs. Although the committee found no basis for reducing the chargeback, it did so in the amount of \$101,660 as a gesture of "goodwill".
- Although Mr. Nissani professed personal lack of knowledge of the "titling", registration and documentation terms of the VGP promotion, they were no different from every other sale. FCA never stated or implied that vehicles used in a dealer's loaner program would be exempt from these requirements. FCA posted the VGP terms (and monthly updates) on DealerCONNECT; and FCA's area sales manager briefed three named persons in Hooman's organization, including Mr. Nissani's brother, Rayan Nissani, who was the "person in charge". Moreover, someone in the organization was familiar with the VGP promotion in order to calculate the monthly MPL for the target number of vehicles which were required to be sold to qualify for incentive payments.
- Although section 3065.1(g)(4) allows a dealer to "cure noncompliance relating to the claim", no "cure" was possible here, since Hooman's failure to timely "title" and register vehicles at or near the times it had "NVDR'd" the sales to FCA was time-sensitive. The failure not only violated VGP promotion terms, but also Vehicle Code provisions governing the "titling" and registration of vehicles driven on California highways.

RELATED MATTERS:

- Related Case Law: There are no published court decisions applicable to this case.
- Applicable Statutes and Regulations: Vehicle Code sections 331, 331.1, 331.2, 3065.1, and a number of DMV registration and titling provisions.